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14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO

16
17 TECHNOLOGY LICENSING COMPANY,
INC.,

Case No. CV 09-04453 SI

18 Plaintiff,

District Judge: Hon. Susan Illston

19 v.

Magistrate Judge: Hon. Edward M. Chen

20 CURTIS INTERNATIONAL LTD.,

21 Defendant.

22 STIPULATED PROTECTIVE ORDER

23 CURTIS INTERNATIONAL LTD.,

24 Counterclaimant,

25 v.

26 TECHNOLOGY LICENSING COMPANY,
INC.,

27 Counter-defendant.

STIPULATED PROTECTIVE ORDER

1 2.1. **PURPOSES AND LIMITATIONS**

3 Disclosure and discovery activity in this action are likely to involve production of
 4 confidential, proprietary, or private information for which special protection from public disclosure
 5 and from use for any purpose other than prosecuting this litigation would be warranted.

6 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
 7 Protective Order. The parties acknowledge that this Order does not confer blanket protections on all
 8 disclosures or responses to discovery and that the protection it affords extends only to the limited
 9 information or items that are entitled under the applicable legal principles to treatment as
 10 confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated
 11 Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule
 12 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied
 13 when a party seeks permission from the court to file material under seal.

14 2.2. **DEFINITIONS**

15 2.1. **Party:** any party to this action, including all of its officers, directors, employees,
 16 consultants, retained experts, and outside counsel (and their support staff).

17 2.2. **Disclosure or Discovery Material:** all items or information, regardless of the
 18 medium or manner generated, stored, or maintained (including, among other things, testimony,
 19 transcripts, or tangible things) that are produced or generated in disclosures or responses to
 20 discovery in this matter.

21 2.3. **“Confidential” Information or Items:** information (regardless of how generated,
 22 stored or maintained) or tangible things that qualify for protection under standards developed under
 23 F.R.Civ.P. 26(c).

24 2.4. **“Highly Confidential – Attorneys’ Eyes Only” Information or Items:** extremely
 25 sensitive “Confidential Information or Items” whose disclosure to another Party or nonparty would
 26 create a substantial risk of serious injury that could not be avoided by less restrictive means.

27 2.5. **Receiving Party:** a Party that receives Disclosure or Discovery Material from a
 28 Producing Party.

1 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
2 Material in this action.

3 2.7 Designating Party: a Party or non-party that designates information or items that it
4 produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential —
5 Attorneys’ Eyes Only.”

6 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
7 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

8 2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained
9 to represent or advise a Party in this action.

10 2.10 House Counsel: attorneys who are employees of a Party.

11 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
12 support staffs).

13 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to
14 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
15 consultant in this action and who is not a past or a current employee of a Party or of a competitor of
16 a Party’s and who, at the time of retention, is not anticipated to become an employee of a Party or a
17 competitor of a Party’s. This definition includes a professional jury or trial consultant retained in
18 connection with this litigation.

19 2.13 Professional Vendors: persons or entities that provide litigation support services
20 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
21 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

22 3. SCOPE

23 The protections conferred by this Stipulation and Order cover not only Protected Material
24 (as defined above), but also any information copied or extracted there from, as well as all copies,
25 excerpts, summaries, or compilations thereof, plus testimony , conversations, or presentations by
26 parties or counsel to or in court or in other settings that might reveal Protected Material.

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1 4. DURATION

2 Even after the termination of this litigation, the confidentiality obligations imposed by this
 3 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
 4 otherwise directs.

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
 7 non-party that designates information or items for protection under this Order must take care to
 8 limit any such designation to specific material that qualifies under the appropriate standards. A
 9 Designating Party must take care to designate for protection only those parts of material,
 10 documents, items, or oral or written communications that qualify – so that other portions of the
 11 material, documents, items, or communications for which protection is not warranted are not swept
 12 unjustifiably within the ambit of this Order.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
 14 to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily
 15 encumber or retard the case development process, or to impose unnecessary expenses and burdens
 16 on other parties), expose the Designating Party to sanctions.

17 If it comes to a Party's or a non-party's attention that information or items that it designated
 18 for protection do not qualify for protection at all, or do not qualify for the level of protection
 19 initially asserted, that Party or non-party must promptly notify all other parties that it is
 20 withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
 22 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material
 23 that qualifies for protection under this Order must be clearly so designated before the material is
 24 disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (apart from transcripts of depositions or other
 27 pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or

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1 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" on each page that contains
 2 protected material.

3 A Party or non-party that makes original documents or materials available for inspection
 4 need not designate them for protection until after the inspecting Party has indicated which material
 5 it would like copied and produced. During the inspection and before the designation, all of the
 6 material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
 7 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
 8 copied and produced, the Producing Party must determine which documents, or portions thereof,
 9 qualify for protection under this Order, then, before producing the specified documents, the
 10 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
 11 CONFIDENTIAL – ATTORNEYS' EYES ONLY") on each page that contains Protected Material.

12 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party
 13 or non-party offering or sponsoring the testimony identify on the record, before the close of the
 14 deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of
 15 the testimony that qualify as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." When
 16 it is impractical to identify separately each portion of testimony that is entitled to protection, and
 17 when it appears that substantial portions of the testimony may qualify for protection, the Party or
 18 non-party that sponsors, offers, or gives the testimony may invoke on the record (before the
 19 deposition or proceeding is concluded) a right to have up to 20 days after receiving the transcript to
 20 identify the specific portions of the testimony as to which protection is sought and to specify the
 21 level of protection being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
 22 ATTORNEYS' EYES ONLY"). Only those portions of the testimony that are appropriately
 23 designated for protection within the 20 days shall be covered by the provisions of this Stipulated
 24 Protective Order.

25 Transcript pages containing Protected Material must be separately bound by the court
 26 reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" or "HIGHLY
 27 CONFIDENTIAL – ATTORNEYS' EYES ONLY," as instructed by the Party or nonparty offering
 28 or sponsoring the witness or presenting the testimony.

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
9 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’
10 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection under
11 this Order for such material. If material is appropriately designated as “Confidential” or “Highly
12 Confidential – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party,
13 on timely notification of the designation, must make reasonable efforts to assure that the material is
14 treated in accordance with the provisions of this Order.

15 | P a g e | 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
17 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
18 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
19 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
20 after the original designation is disclosed.

21 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's
22 confidentiality designation must do so in good faith and must begin the process by written
23 correspondence that explains in detail the applicable issues. Subsequently the Parties have the right
24 to confer directly (in voice to voice dialogue; other forms of communication are not sufficient) with
25 counsel for the Designating Party. In conferring, the challenging Party must explain the basis for its
26 belief that the confidentiality designation was not proper and must give the Designating Party an
27 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
28 designation is offered, to explain the basis for the chosen designation. A challenging Party may

1 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
 2 process first.

3 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
 4 designation after considering the justification offered by the Designating Party may file and serve a
 5 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that
 6 identifies the challenged material and sets forth in detail the basis for the challenge. Each such
 7 motion must be accompanied by a competent declaration that affirms that the movant has complied
 8 with the meet and confer requirements imposed in the preceding paragraph and that sets forth with
 9 specificity the justification for the confidentiality designation that was given by the Designating
 10 Party in the meet and confer dialogue.

11 The burden of persuasion in any such challenge proceeding shall be on the Designating
 12 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
 13 question the level of protection to which it is entitled under the Producing Party's designation.

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 16 produced by another Party or by a non-party in connection with this case only for prosecuting,
 17 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 18 the categories of persons and under the conditions described in this Order. When the litigation has
 19 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
 20 DISPOSITION).

21 Protected Material must be stored and maintained by a Receiving Party in a secure manner
 22 that ensures that access is limited to the persons authorized under this Order.

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
 24 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 25 information or item designated CONFIDENTIAL only to:

26 (a) the Receiving Party's Outside Counsel of record in this action, as
 27
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1 well as employees of said Counsel to whom it is reasonably necessary to disclose the
 2 information for this litigation and who have signed the "Agreement to Be Bound by Protective
 3 Order" that is attached hereto as Exhibit A;

4 (b) the officers, directors, and employees (including House Counsel) of the
 5 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
 6 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

7 (c) experts (as defined in this Order) of the Receiving Party to whom
 8 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to
 9 Be Bound by Protective Order" (Exhibit A);

10 (d) the Court and its personnel;

11 (e) court reporters, their staffs, and professional vendors to whom
 12 disclosure is reasonably necessary for this litigation and who have signed the "Agreement
 13 to Be Bound by Protective Order" (Exhibit A); and

14 (f) the author of the document or any current officers, directors, or employees of the original
 15 source of the information.

16 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

17 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
 18 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
 19 CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

20 (a) the Receiving Party's Outside Counsel of record in this action, as well as employees of
 21 said Counsel to whom it is reasonably necessary to disclose the information for this litigation and
 22 who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as
 23 Exhibit A;

24 (b) House Counsel of a Receiving Party (1) who has no involvement in competitive
 25 decision-making or in patent prosecutions involving Patent Infringement, (2) to whom
 26 disclosure is reasonably necessary for this litigation, and (3) who has signed the "Agreement to Be
 27 Bound by Protective Order" (Exhibit A);

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- (c) Experts (as defined in this Order) (1) to whom disclosure reasonably necessary for this litigation, (2) who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below, have been followed;
- (d) the Court and its personnel;
- (e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A); and
- (f) the author of the document or the original source of the information.

9 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY” Information or Items to “Experts”

11 (a) Unless otherwise ordered by the court or agreed in writing by the
12 Designating Party, a Party that seeks to disclose to an “Expert” (as defined in this Order)
13 any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
14 EYES ONLY” first must make a written request to the Designating Party that (1) sets forth the full
15 name of the Expert and the city and state of his or her primary residence, (2) attaches a copy of the
16 Expert’s current resume, (3) identifies the Expert’s current employer(s), (4) identifies each person
17 or entity from whom the Expert has received compensation for work in his or her areas of expertise
18 or to whom the expert has provided professional services at any time during the preceding five
19 years, and (5) identifies (by name and number of the case, filing date, and location of court) any
20 litigation in connection with which the Expert has provided any professional services during the
21 preceding five years.

(b) A Party that makes a request and provides the information specified in the preceding paragraph may disclose the subject Protected Material to the identified Expert unless, within seven court days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

27 (c) A Party that receives a timely written objection must meet and Confer with the
28 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by

1 agreement. If no agreement is reached within ten days of the expert disclosure, the Party seeking to
 2 make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in
 3 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so.
 4 Any such motion must describe the circumstances with specificity, set forth in detail the reasons for
 5 which the disclosure to the Expert is reasonably necessary, assess the risk of harm that the
 6 disclosure would entail and suggest any additional means that might be used to reduce that risk. In
 7 addition, any such motion must be accompanied by a competent declaration in which the movant
 8 describes the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of
 9 the meet and confer discussions) and sets forth the reasons advanced by the Designating Party for
 10 its refusal to approve the disclosure.

11 In any such proceeding the Party opposing disclosure to the Expert shall bear the burden of
 12 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
 13 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

14 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 15 LITIGATION

16 If a Receiving Party is served with a subpoena or an order issued in other litigation
 17 would compel disclosure of any information or items designated in this action as
 18 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the
 19 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
 20 and in no event more than three court days after receiving the subpoena or order. Such notification
 21 must include a copy of the subpoena or court order.

22 The Receiving Party also must immediately inform in writing the Party who caused the
 23 subpoena or order to issue in the other litigation that some or all the material covered by the
 24 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
 25 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
 26 caused the subpoena or order to issue.

27 The purpose of imposing these duties is to alert the interested parties to the existence of this
 28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its

1 confidentiality interests in the court from which the subpoena or order issued. The Designating
 2 Party shall bear the burdens and the expenses of seeking protection in that court of its confidential
 3 material – and nothing in these provisions should be construed as authorizing or encouraging a
 4 Receiving Party in this action to disobey a lawful directive from another court.

5 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 7 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
 8 the Receiving Party must immediately (a) notify in writing the Designating Party of the
 9 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
 10 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
 11 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
 12 Be Bound” that is attached hereto as Exhibit A.

13 **10. FILING PROTECTED MATERIAL**

14 Without written permission from the Designating Party or a court order secured after
 15 appropriate notice to all interested persons, a Party may not file in the public record in this action
 16 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
 17 with Civil Local Rule 79-5.

18 **11. FINAL DISPOSITION**

19 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days
 20 after the final termination of this action, each Receiving Party must return all Protected Material to
 21 the Producing Party. As used in this subdivision, “all Protected Material” includes all copies,
 22 abstracts, compilations, summaries or any other form of reproducing or capturing any of the
 23 Protected Material. With permission in writing from the Designating Party, the Receiving Party
 24 may destroy some or all of the Protected Material instead of returning it. Whether the Protected
 25 Material is returned or destroyed, the Receiving Party must submit a written certification to the
 26 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day
 27 deadline that identifies (by category, where appropriate) all the Protected Material that was returned
 28 or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts,

1 compilations, summaries or other forms of reproducing or capturing any of the Protected Material.
2 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
3 motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if
4 such materials contain Protected Material. Any such archival copies that contain or constitute
5 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION),
6 above.

7 12. **MISCELLANEOUS**

8 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
9 seek its modification by the Court in the future.

10 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
11 Order no Party waives any right it otherwise would have to object to disclosing or producing any
12 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
13 Party waives any right to object on any ground to use in evidence of any of the material covered by
14 this Protective Order.

15 Dated: March 9, 2010

By _____ /s/ John W. Carpenter
John W. Carpenter
Attorneys for Plaintiff
TECHNOLOGY LICENSING COMPANY, INC.

18 Dated: March 9, 2010

LOEB & LOEB LLP
JORDAN A. SIGALE
LAURA A. WYTSMA

25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

27 Dated: _____, 2010



EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____

[print or type full name]

6 of _____

[print or type full address]

declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____

[date]

12 in the case of Technology Licensing Company Inc. v. Curtis International LTD, CV 09-04453
13 EMC

14 I agree to comply with and to be bound by all the terms of this Stipulated Protective Order
15 and I understand and acknowledge that failure to so comply could expose me to sanctions and
16 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any
17 information or item that is subject to this Stipulated Protective Order to any person or entity except
18 in strict compliance with the provisions of this Order.

19 I further agree to submit to the jurisdiction of the United States District Court for the
20 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
21 Order, even if such enforcement proceedings occur after termination of this action.

23 I hereby appoint _____

[print or type full name]

25 of _____

[print or type full address and telephone number]

27 as my California agent for service of process in connection with this action or any proceedings
28 related to enforcement of this Stipulated Protective Order.

1 Date: _____

2

3 City and State where sworn and signed: _____

4

5 Printed name: _____

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[printed name]

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8 Signature: _____

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[signature]

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